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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/890,143 | 07/26/2001 | Masaki Yamamoto | SHIG19990241 | 7584 |
| 27667 | 7590 | 11/29/2004 | EXAMINER | |
| HAYES, SOLOWAY P.C. 130 W. CUSHING STREET TUCSON, AZ 85701 | | | KAO, CHIH CHENG G | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2882 | |

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

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|------------------------------|------------------------|---------------------|---|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/890,143 | YAMAMOTO, MASAKI | |
| | Examiner | Art Unit | . |
| | Chih-Cheng Glen Kao | 2882 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11/12/04.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 8-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 8-11 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 September 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|--|
| <ol style="list-style-type: none"> 1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | <ol style="list-style-type: none"> 4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____. 5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6)<input type="checkbox"/> Other: _____. |
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DETAILED ACTION

Claim Objections

1. Claim 10 is objected to because of the following informality, which appears to be a minor draft error creating grammatical issues. In the following format (location of objection; suggestion for correction), the following suggestion may obviate the objection: (claim 10, lines 2-3; “a difference between a material”; replacing “between” with - -in- -). For purposes of examination, the claim has been treated as such. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 8 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Sweeney et al. (US Patent 6235434).

3. Regarding claim 8, Sweeney et al. discloses a method comprising the steps of forming a multilayer film (Fig. 1, #110 and 130), which would necessarily be composed of high and low refractive index materials (col. 3, lines 38-40) due to the nature of molybdenum and silicon, on a

substrate (Fig. 1, #120) to control a phase and an amplitude of emerging rays (Abstract) and adjusting a wavefront phase by cutting away a portion of the multilayer film (Abstract).

4. Regarding claim 10, Sweeney et al. further discloses cutting controlled by detecting a difference in a material (col. 4, lines 57-60).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweeney et al. as respectively applied to claim 8 above, and further in view of Murakami (US Patent 6160867).

For purposes of being concise, Sweeney et al. discloses a method as recited above. Sweeney et al. further discloses cutting a correction film (Fig. 1, #130, and Abstract).

However, Sweeney et al. does not disclose a number of cycles larger than necessary to substantially saturate a reflectance.

Murakami teaches a number of cycles larger than necessary to substantially saturate a reflectance (col. 1, lines 20-25).

It would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the method of Sweeney et al. with the number of cycles of Murakami, since one would be motivated to have that many cycles to obtain as high an interface-amplitude reflectance as possible (col. 1, lines 20-25) as implied from Murakami.

Response to Arguments

6. Applicant's arguments filed 11/12/04 have been fully considered but they are not persuasive.

Regarding Sweeney et al., Applicant argues that Sweeney et al. does not teach or suggest the film composed of layers of high and low refractive index materials. The Examiner disagrees. Sweeney et al. discloses the multilayer comprising molybdenum and silicon (col. 3, lines 38-40). These two materials would necessarily have high and low refractive indices respectively as evidenced by US Patent 5911858 (col. 16, lines 57-63). On another note, even if the absorber film of Sweeney et al. is the portion of the surface that is cut, the absorber film is still considered part of the multilayer film. Therefore, Sweeney et al. reads on claim 8 at least.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chih-Cheng Glen Kao whose telephone number is (571) 272-2492. The examiner can normally be reached on M - F (9 am to 5 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Glick can be reached on (571) 272-2490. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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EDWARD J. GLICK
SUPERVISORY PATENT EXAMINER